



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.2291 OF 2014

Mr.Kailash S/o. Late Mehar Singh Kher .. Petitioner
Versus
The State of Maharashtra and Ors .. Respondents
...

Mr.Ashok M Saraogi a/w Priti Rao, Amit Dubey for the petitioner.
Ms.D.S. Krishnaiyar, APP for the State.

CORAM: BHARATI DANGRE &
SHYAM C. CHANDAK, JJ.
DATED : 4th MARCH, 2025

JUDGMENT:-(PER BHARATI DANGRE J)

1. Being aggrieved by filing of a case by Mr. Narinder Makkar a resident of Ludhiana, praying or registration of an offence against the petitioner under Section 295 A, and 298 of IPC, the petitioner has approached this Court for its quashing.

The petitioner Kailash Kher, a well-known singer, claiming a good reputation in the society at large and is well-known for his music composition and the songs which he has sung for various films and programs is contemplating action pursuant to the complaint filed before the Judicial Magistrate, Ludhiana in the background that the respondent no.3 Sony Music Entertainment Pvt Ltd, having its registered office in Santacruz (West) Mumbai had telecasted a video album of a song through various networks and since the petitioner is choreographed in the said song along with

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many other artists, the respondent no.2 being aggrieved approached the Court in Ludhiana, where he filed the complaint.

2. The complaint being annexed at Exhibit B to the petition described the complainant as a worshiper of Lord Shiva and on gaining knowledge about release of a new album 'Kailasa Jhoomo re' he purchased a CD and watched the song 'Babam Bam'. The grievance in the complaint reads as below:-

“3. That the complainant came to know regarding the New Album of accused no.1 Kailasa Jhoomo re from his friend namely Aswani Jhony. Thereafter the complainant purchased a C.D. of accused no.1 and after watching his one of the song “BABAM BAM”. In this song the accused no.1 is singing the song of SHIV SHANKAR with a girl wearing clumsy and very short clothes. In this song a girl and boy are also kissing to each other & vulgarity is being shown in this song. Some part of the song the police also came there and after receiving some money they left the spot and in the end of the song they are burning a flag upon which a heart is printed. After seeing this song religious feelings and emotions of the complainant have been gravely hurt. The accused no.1 deliberately sung this song intent to bound the religious feelings of religious persons have performed this song by causing religious insultation and have outrage the feelings of the complainant. This act and conduct of the accused no.1 is illegal against the religious feelings of the complainant, which gives the cause of action to the complainant to file this complaint against the accused. Thereafter the complainant alongwith Aswani Jhony went to Salem Tabri Police Station and requested them to register a case against the above said accused but they flatly refused to listen the complainant rather make mockery of the complainant. Original C.D. and copy of D.V.D. are attached herewith for kind perusal of this Hon’ble Court.

That the accused No.1 has committed an offence u/s 295, 298 IPC and they be summoned to the face trial.”

3. In the wake of the aforesaid accusation, it is prayed by the complainant that the accused persons be summoned, tried and punished according to law in the interest of justice.

4. Before, any action could be taken on the said complaint, the petitioner approached this Court and on 4/07/2014, the following

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order was passed:-

- “1. Issue notice to Respondent Nos.1 to 3, returnable on 14/08/2014. Mrs. Kantharia, the learned APP appearing on behalf of the State waives service of notice on behalf of the State. In the meantime, no coercive steps be taken by Mumbai Police or warrant if issued by Ludhiana Court is stayed till the next date.*
- 2. Stand over to 14/08/2014.”*

The interim order to the above effect continue to remain in operation till date.

5. We have heard learned counsel Mr. Saraogi for the petitioner, learned Additional Public Prosecutor, Ms. D.S. Krishnaiyar for the State.

Rule. Rule is made returnable forthwith. Heard finally by consent of the respective counsel.

At the outset, the learned PP would raise an objection about maintainability of the petition before this Court, since the relief sought in the petition is for quashing of the proceedings pending in the Court of Ilaka Judicial Magistrate, Ludhiana, which is beyond the territorial jurisdiction of this Court and therefore, according to her, this Court may not issue a writ, since the Court of the Magistrate fall beyond its territorial limits.

6. Dealing with the said objection, Mr. Saraogi would submit that the complaint is lodged by the complainant attributing commission of an offence punishable under Section 295A and 298 of IPC against the petitioner, a singer as well as Sony Music Entertainment India Ltd, and also ITV, the Interactive Music Channel in Ludhiana. According to him, the music was composed and released by Sony Music Entertainment Pvt Ltd, whose office is situated in

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Santacruz, Mumbai. It is not in dispute that the song is sung by the petitioner, according to Mr. Saraogi, but the choreography of the song as well as its picturization is the concept of the Producer and Director of the film/album. For the purpose of picturization of the said song, Sony Music Entertainment has availed services of Mr. Mahesh Mathai of Highlight Films, and upon the song being shot, it was presented to the Central Board of Film Certification, which had certified the same to be fit for 'unrestricted public exhibition', and the certificate was issued in favour of Sony Music Entertainment (I) Pvt Ltd, Mumbai.

Merely because the copies of the C.Ds have been circulated throughout the globe and the complainant happened to file a complaint in Ludhiana, according to Mr.Saraogi, the entire cause of action do not fall exclusively within the jurisdiction of the said Court, as the production and picturization of the song has taken place within the jurisdiction of this Court, since Sony Music Entertainment Ltd is operating within the jurisdiction of this Court, and even has its registered office in Mumbai.

7. The Writ Petition being filed by the petitioner invoking section 226 of the Constitution of India r/w Section 482 of the Code of Criminal Procedure, the objection raised is about the exercise of jurisdiction by the Court beyond against an order passed by a Court which is situated beyond its territorial jurisdiction and what is sought to be invoked is clause 2 of Article 226 of the Constitution, which reads thus:-

“2 The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories

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within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”

8. We find substance in submission of Mr. Saraogi that the petitioner is a singer, who is located in Bombay, State of Maharashtra, and his avocation as a singer, has a global appeal and he is required to travel across the length and breadth of country for the purposes of his shows and for shooting of his songs/album. As far as the producer of the Album, Sony Entertainment Ltd is concerned, it is having its office in Mumbai and merely because the complaint is filed in Ludhiana, this Court cannot be said to lack jurisdiction to entertain the petition merely on the ground that the Court, where the complaint is filed is situated beyond its territorial limits.

9. In *Navinchandra Majithia vs. State of Maharashtra*¹, an identical issue arose for consideration, when an Appeal was filed before the Apex Court being aggrieved by the judgment passed by the Bombay High Court, dismissing a writ petition on the ground of want of jurisdiction.

The writ petition was filed against the State of Maharashtra, as well as the Special Superintendent of Police, CID, Shillong, praying for quashing of the complaint lodged by M/s. J.P. Holdings Ltd. or in the alternative to issue a writ of mandamus directing the State of Meghalaya to transfer the investigation being conducted by the officers of CID at Shillong to the EOW, General Branch of CID, Mumbai or any other investigating agency of Mumbai Police. A writ of prohibition or any other order/direction

¹ AIR 2000 SC 2966

restraining Special Superintendent of Police, CID, Shillong from taking any further step in respect of the complaint was also prayed for.

The relevant facts involved, which constrained filing of the writ petition would disclose that the petitioner was working as a Managing Director of the Company, M/s. India Farmers Pvt. Ltd., having its registered office at Mumbai. The then Government of Bombay, put IFPL, in possession of land at Aksa, Marve, Bombay and it granted lease in its favour for period of 999 years. A third company entered into agreement with the petitioner for purchase of 2430 shares at a total consideration of Rs. 58 Crores and a sum of Rs. 2 Crores was paid by it as earnest money and a sum of Rs. 25,00,000/- was paid subsequently and the balance purchase price was to be paid on or before 31/10/1995. However, the company was unable to fulfil its commitment to make the payment of the balance purchase price, the petitioner terminated the agreement.

Being aggrieved, M/s. Chinar Export Ltd., filed Suit in the High Court of Bombay, for specific performance of agreement and two share holders of M/s. Chinar Export Ltd., took over management and control of the company and they formed another company M/s J.B. Holdings Ltd., at Shillong. However, the Suit was withdrawn upon the petitioners returning the amount paid by M/s. Chinar Export Ltd,. After exchange of correspondence between the parties, M/s. J.B. Holding Ltd., tried to pressurize the petitioner to reverse the transaction of sale of shares and recover the money paid in respect thereof, which eventually failed and therefore, it filed a complaint against the petitioner at Shillong in the State of

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Meghalaya.

The Petitioner claimed that the case was false and filed belatedly for the purpose of exerting pressure and causing harassment to him, so as to get the transaction relating to transfer of shares reversed. According to the petitioner since the entire transaction upon which the complaint is purportedly based had taken place in Mumbai, and not any other place outside Mumbai, the complaint ought not to have been entertained by police at Shillong.

10. The Bombay High Court dismissed the Writ Petition holding that it could not entertain it, since petitioner had prayed for quashing of the complaint which was lodged by the complainant at Shillong in State of Meghalaya. In this background, the Hon'ble Apex Court, speaking through Justice Thomas (as his Lordship then was), observed thus:-

".....We make it clear that the mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another State. Nor are we to be understood that any person can create a fake cause of action or even concoct one by simply jutting into the territorial limits of another State or by making a sojourn or even a permanent residence therein. The place of residence of the person moving a High Court is not the criterion to determine the contours of the cause of action in the particular writ petition. The High Court before which the writ petition is filed must ascertain whether any part of the cause of action has arisen within the territorial limits of its jurisdiction. It depends upon the facts in each case.

7. In the present case, a large number of events have taken place at Bombay in respect of the allegations contained in the FIR registered at Shillong. If the averments in the writ petition are correct then the major portion of the facts which led to the registering of the FIR have taken place at Bombay. It is unnecessary to repeat those events over again as Mohapatra, J. has adverted to them with precision and the needed details.

In the aforesaid situation it is almost impossible to hold that not even a part of the cause of action has arisen at Bombay so as to deprive the High Court of Bombay of total jurisdiction to entertain the writ

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petition filed by the petitioner. Even the very fact that major portion of the investigation of the case under the Fir has to be conducted at Bombay itself shows that the cause of action cannot escape from the territorial limits of the Bombay High Court.”

11. Mr. Saraogi has also placed reliance upon the latest decision in case of *State of Arunachal Pradesh vs. Kamal Agrawal and ors²*, where the appeals arose out of the First Information Report registered at police station Pasi Ghat district Siang East, Arunachal Pradesh being lodged by the attorney holder of the proprietor of M/s. Shiv Bhandar. The accused persons filed the petition for quashing of the FIR before Gauhati High Court and the petition was dismissed. Some of the accused persons approached Rajasthan High Court praying for quashing of the same FIR and this petitions were allowed by Rajasthan High Court.

Being aggrieved, the State of Arunachal Pradesh filed 3 SLPs and all the petitions were clubbed together.

Noting that the FIR mentions the address of the complainant Mr. Anil Agrawal to be of Arunchal Pradesh, the address of the six accused persons in the FIR was that of Jaipur City Rajasthan. The property for which the alleged payment of 1 Crore was said to have been met was also situated in Jaipur, Rajasthan and noting that apart from the fact that the complainant was located in Arunchal Pradesh, no other fact relevant to the alleged offence had taken place within the State of Arunachal Pradesh, but still the FIR was registered there. The Gauhati High Court, has dismissed the petition finding that no circumstances exist calling for quashing of the proceedings, but Rajasthan High Court proceeded to quash the

² (2024) SCC Online SC 554

proceedings on the ground that no part of cause of action had arisen in State of Arunachal Pradesh and rather entire cause of action had arisen in State of Rajasthan and infact the Police/Court in Arunachal Pradesh lack territorial jurisdiction to entertain the FIR. It is in this background, the Apex Court recorded thus:-

“15. The State of Arunachal Pradesh ought to have been happy getting rid of an unnecessary Criminal Case being registered and tried in Arunachal Pradesh. Why the State of Arunachal Pradesh has approached this Court is also a question to be answered by the said State when the complainant in a matter relating to civil/commercial dispute is not coming forward to defend its FIR which has been quashed by the Rajasthan High Court. Normally, in a given case where issue is of territorial jurisdiction we could have directed to transfer the investigation or the trial to the State where the cause of action would lie but in the present case, we find that no offence as such is made out.”

Though on merits the entire FIR was quashed by the Apex Court, though it was noted that on completion of investigation, charge-sheet was filed and on merits it was noted that the dispute was civil in nature.

12. In the light of the aforesaid authoritative pronouncement, since we have noted that except filing of the complaint by the complainant in Ludhiana, no cause of action had arisen within the jurisdiction of the said Court. The album featuring the petitioner was recorded in the C.D., which was available for sale in all parts of the country, and just because the complainant viewed the said C.D. and the song in Ludhiana, he choose to file the complaint in Ludhiana, but since the production of the song was by respondent no.2, which was situated in Mumbai, it cannot be said that the exclusive cause of action arose in Ludhiana, but it is the other way round.

13. Thus we are convinced that this Court has jurisdiction to entertain the present petition and we have also heard Mr. Saraogi, and

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the learned APP on merits of the matter. The complaint has invoked Section 295 A and Section 298 of IPC.

Section 295 A reads thus:-

“295A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.— Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

14. The necessary ingredient of the aforesaid provision is deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words either spoken or written or by signs or by visible representations otherwise, when it amounts to insulting or attempting to insult the religion or religious belief of that class.

In order to attract the offence under Section 295A, what is necessary to be demonstrated is deliberate attempt and in this case the attempt on part of the Petitioner, specially when the song sung by him and picturized on him was a musical piece sung in praise of Lord Shiva.

The test to invoke Section 295A is, whether the act has the potential to disturb public order or morality.

15. Learned counsel Mr. Saraogi had played before us the song on the laptop and the same was viewed by the learned APP.

In the said song, the petitioner is seen singing, with a Clapper Drum (Damaru) and he is surrounded by a mob of people

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dancing around. In any case, it is not the allegation in the complaint that the lyrics sung by the petitioner as a singer had outraged the religious feelings of the complainant, but the only accusation, against him is that he is dancing with some girls, who were scantily dressed and in the song, the girl and boy are also kissing each other, which is display of vulgarity and this is alleged by the complainant, to hurt the religious feelings and emotions of the complainant.

What is important to note in this whole scenario is the absence of the deliberate and malicious intention on part of the petitioner, who is just singing the song, and in any case he is not the producer of the album nor he has directed its filming/recording. Merely because he is singing the song being surrounded by large number of people, who have independently performed the role assigned to them by the Director, according to us the ingredients of Section 295 A of IPC are not made out.

16. Moreso every action which may be to the dislike of a class of people may not necessarily lead to outraging religious sentiments, as a person can be foisted with Section 295A if his action is intentional and malevolent, aimed at insulting religious feelings/beliefs and would not cover an act which is not intended to outrage the religious feelings.

In *Ramji Lal Modi vs. State of UP*³, it is held that Section 295A do not penalise any and every act of insult to or attempt to insult the religion or religious feelings, of a class of citizens, which are perpetuated with deliberate and malicious intention of outraging the religious feelings of that class. Insults to religion offered

³ AIR 1957 SC 620

unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class are not encompassed within the said provision, which only punishes the aggravated form of insult to religion when it is perpetrated with deliberate and malicious intention of outraging the religious feelings of that class.

It is obvious that one who alleges malicious and deliberate act on part of another has to prove it and then it would be necessary to consider what act could be said to have been done maliciously. A man act maliciously when he willfully and without lawful excuse does that which he knows will injure another in person or property. The term 'malicious' denotes ill-will or perversion, incorrigible disposition. It means and implies an intention to do an act which is wrongful to the detriment of another and whether a person has acted corruptly or maliciously is a question of fact which must be proved.

17. The alleged act of the Petitioner, though we are conscious of the fact that he is not the Director/Producer of the Album, but has only vocalised a song, which is picturized on him, with several other things going on in the background, probably is intended as a theme, will have to be tested against the fundamental right of freedom of speech and expression and liberty of conscience guaranteed to every citizen under the Constitution. Though the Constitution does not guarantee, it as an absolute right and reasonable fetters can be imposed by law, and many laws restrict free speech, such as laws against blasphemy, sedition or defamation, which derive their legitimacy from Article 19(2) of the Constitution.

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18. *“Intolerance of dissent from the orthodoxy of the day has been the bane of Indian society for centuries. But it is precisely in the ready acceptance of the right to dissent as distinct from its mere tolerance, that a free Society distinguishes itself”* – A G Noorani, a famous author, historian & political analyst has aptly described the situation.

While safeguarding the freedom of speech, the burden lie on the complainant to prove the ingredients of Section 295A, as it is intended to deal with an offence more serious than the one punishable under Section 298 of the Penal Code, which relates to, oral words uttered in presence of the person with intention of wounding his religious feelings.

19. The Division Bench of Bombay High Court in *Bhau Shankarrao Suradkar & Anr. vs. State of Maharashtra*⁴, had ruled thus :-

“It is a fact that photographs of God and Goddesses of Hindu religion are being pasted on the fire crackers. This is not happening for the first time, but this practice is going on since last many years and up-till-now nobody has raised any objection regarding this practice. That has happened only because nobody thought it objectionable, nobody’s feelings were hurt on seeing the firecrackers bursting and the photographs destroying because the photographs on the fire crackers were not being looked at as photographs of God and Goddesses, but just some prints to attract the attention of the customers. There was no intention that anybody’s feelings should be hurt by selling such fire crackers or by bursting such fire crackers. Now altogether new dimension is being given to this matter. Nobody from Hindu community up-till- now has thought over on this issue in this way. It is just whim of the Petitioners and for that they have come before the Court. This is nothing but, wasting time, money and energy.....”

20. Yet one another important aspect of the matter is, for prosecuting the Petitioner under Section 295A, it is necessary to

⁴ 1999 Cr.L.J. 1230

obtain sanction under Section 196(1) of the Cr.P.C. and this has been held to be imperative, in its absence, the prosecution of the Petitioner under Section 295A cannot sustain.

Similarly, as far as the offence under Section 298 of IPC is concerned, the complainant has failed to make out even a prima facie case of his religious feelings being wounded with a deliberate intention attributed to the Petitioner. The lyrics of the song sung by the Petitioner is nothing but praise of Lord Shiva and the attributes of his mighty character and nothing else.

21. Applying the law laid down by the Apex Court in State of *Haryana and Ors. vs. Bhajan Lal & Ors*⁵. which has issued guidelines for the High Court to exercise its powers under Article 226 of the Constitution of India, or under Section 482 of the Cr.P.C. which permits its exercise, where the allegations made in the FIR or the complaint even if they are taken at their face value and accepted in its entirety do not prima facie constitute any offence or make out a case against the accused, on being satisfied that the present case falls within clause (1) of the guidelines, we are inclined to allow the Writ Petition.

In the result, the WP is made absolute by quashing and setting aside the case pending on the file of the Court of Ilaka Judicial Magistrate, Ludhiana, filed by Respondent No.2 under the provisions of Section 295A, and 298 of the Indian Penal Code.

(SHYAM C. CHANDAK, J)

(BHARATI DANGRE, J)

⁵ AIR 1992 Supp (1) SCC 335